HJ. ISMAIL HJ. TAR & ORS.

v.

BRUNEI SHELL PETROLEUM CO. SDN. BHD.

HIGH COURT, BRUNEI
DENYS ROBERTS CJ
[CIVIL SUIT NO. 88 OF 1986]
12 FEBRUARY 1987

CONTRACT: *Unilateral variation of terms - Collective agreements - Are trade unions bound by collective agreements - Are they a part of employee's contract of employment.*

The plaintiffs', 23 former employees of the defendant (Shell) brought an action for redundancy payments which they claimed to be entitled to in terms of their contracts of employment. Plaintiffs 1 - 19 belonged to the category of Technical and Administrative Staff (TAS) and 20 - 23 to the category of Supervisory and Specialist Staff (SSS). The fact of termination on account of redundancy was not disputed.

The terms of the plaintiffs' employment set out in a manual published by Shell called the Personnel Administration Manual ("PAM") required redundancy payments to be made. The defendants, however, submitted that, with regard to both categories of employees, Shell had the power to vary the terms and conditions of services, including the requirement of redundancy payments.

Each employee who was a member of the SSS was issued on transfer to that grade with a letter of appointment which stated "we may in our discretion vary such terms from time to time." The issue as regards SSS employees was whether Shell could unilaterally vary the terms of services, in reliance on the above clause.

The position as regards the TAS employees was more complicated as no written contract between the parties existed. The questions to be decided in regard of these employees were: (a) what were the terms under which TAS was serving in 1985; and (b) did such terms authorize Shell to withdraw the redundancy provisions in the manner they purported to do. A collective agreement had been entered into between Shell and BOWU which subsisted throughout the relevant period. Clause 1 of the Collective Agreement made the same applicable to TAS employees. Redundancy payments were not mentioned in the collective agreement. Clause 9 of the collective agreement provided "the company may alter, amend or terminate any of these existing benefits other than those provided for in this agreement, as it considers it necessary and desirable and will consult the Union prior to find implementation of the alteration, amendment or termination."

Held:

[1] As regards SSS employees, dismissing the arguments that a variation was only possible if supported by consideration: Where such a variation clause was present in the main contract, as it was in the case of SSS, there was no reason to impose, upon any exercise of the power conferred by the clause, the doctrine of consideration. This had been present in the main contract and it was inappropriate to attempt to impose it again in relation to each exercise of power. The learned judge accordingly concluded that the amendment of the terms of services of SSS, so as to remove a right to redundancy payments, was a proper exercise of Shell's power to vary as provided in the variation clause and the four SSS employees, plaintiff's 20 to 23, would fail in their claims.

[2] As regards TAS employees, dismissing the argument that the collective agreement was not part of the terms of contract TAS, that a collective agreement between an employer and a union, as to the terms to be applied to a member of that union employed by the employer - (a) was not enforceable by employer or union against one another, since such an agreement, unless it provides otherwise, was not intended to create a legal relationship between the parties; (b) to the extent to which an employee agreed to be governed by the terms of such an agreement, or of any conditions of service agreed, in accordance with its terms, such conditions became part of his terms of service and were enforceable by or against him. Upon construction of this collective agreement and a scrutiny of the circumstances of the worker's employment it was evident that the collective agreement was embodied in the contract of service of TAS. Clause 9 of the collective agreement permitted the company to terminate redundancy payments on condition that prior consultation with the union had taken place before the variation was actually implemented. The redundancy payments were thus terminated in accordance with the contracts of services and consequently the claims of the 19 TAS employees must fail.

[The claims of all plaintiffs dismissed.]

Cases referred to:
Photo Production Ltd. v. Securicor Transport Ltd. [1980] AC 827
Lam Yuk-Ming & Ors. v. Attorney-General [1980] HKLR 815
Page v. Liverpool Friendly Society [1927] 43 TLR 712
Yoe v. Steward [1947] 2 All ER 28
Ford Motor Co. Ltd. v. AEF [1969] 2 All ER 482
National Coal Board v. Galley [1958] 1 All ER 91
Young v. Canadian National Rail [1930] AC 83
Morley v. Forward Trust Group [1986] Times 1 July
Rollo v. Minister of Town and Country Planning [1948] 1 All ER 13
Re Union of Benefices of Whippingham and East Cowes, St. James [1954] AC 245

Other source referred to:
Halsbury's Laws of England, Vol. 9, para. 566
Oxford Advanced Learners Dictionary of Current English

For the plaintiffs - David Yeo
For the defendant - D.G. Howell

JUDGMENT

Denys Roberts CJ:

Introduction

This action is brought by 23 former employees of the defendant ("Shell") for a total amount of B$1,381,696.72, being the sum of redundancy payments, to which the plaintiffs claim to be entitled, by virtue of the conditions of their employment with he defendant.

Plaintiffs 1-19, inclusive, belong to the category of Technical and Administrative Staff ("TAS") and plaintiffs 20-23 to the category of Supervisory and Specialist Staff ("SSS"). All plaintiffs were employed on pensionable terms, for which the normal retiring age is 55 years.

Some of the terms of the plaintiffs' employment were sent out in a manual published by Shell called the "Personnel Administration Manual ("PAM"). This Manual was amended, with effect from 16 November 1981, to include the following, intended to be applicable to both TAS and SSS:

9.07 Termination for reasons of Redundancy

In cases of redundancy as much advance warning as possible should be given and formal notice in writing of not less than 1 month given to the employees concerned.

Redundancy payment is made on the following basis:

1½ months's basis salary for each year of service; with a maximum of 36 months' basic salary irrespective and independent of other end of service benefits. However, in no case shall the maximum amount payable exceed 40% of the employee's last drawn basis monthly salary, multiplied by the number of months left in the period between his date of release and the date on which the employee would have reached full retirement age.

In addition, the employee concerned receives his entitlement due to him from the Brunei Shell Provident Fund and Brunei Shell Retirement Benefit Fund (refer ss. 9.01 and 9.02 and respective subsections).

Payments is made for proportionate home leave due at the date of expiry of work and for proportionate annual bonus based on the date service is completed, i.e., date of expiry of work is extended by the number of days of proportionate leave due.

Redundancy payments do not apply to employees on Short Term Contract.

On 31 January 1985, the Superintendent of the Marine Department, on behalf of Shell, issued to each plaintiff, individually, a letter warning him that Shell had been carrying out a study of its marine operations, in view of the general decline in company activity. It stated that it had been decided to run down the Shell fleet and to rely to a greater extent on the use of privately owned vessels.

The letter informed the addressees that their employment with the company "may be terminated during the implementation of these changes", and stated that it was intended as a general notification and did not constitute formal notice of termination of employment.

The letter promised that Shell would give six months notice of termination to those affected and would also make *ex gratia* payment, equivalent to two months' basic salary, as a resettlement allowance, payable at the date of leaving the service. Other end of service benefits would be applied at the time at which employment terminated and employment benefit, such as housing, allowances and medical treatment would be continued until the date when the employee left the service.

On various dates between 28 February and 25 July 1985, each of the plaintiffs received a formal notice of termination of employment. Each such notice gave the plaintiffs six months' notice with pay and stated that an *ex gratia* resettlement allowance of the months basic pay would be paid, as would all employment and end of service benefits.

Neither the warning letter of 31 January nor the later letter terminating employment made any mention of redundancy payments and none have been made.

The plaintiffs say that the general effect of the warning letter and of the subsequent notice of termination was to terminate their services by reason of redundancy, which is not disputed by Shell, and that they are therefore entitled to redundancy payments, which is disputed.

SSS Employees

Unlike TAS, each of those plaintiffs, who is a member of SSS, received, on his transfer to that grade, a letter of appointment, containing the following clause:

> The other terms of your employment will be those from time to time laid down by ourselves generally for employees of your category and it is to be understood that **we may in our discretion vary such terms from time to time**. The principal terms at present in force are set out in the attachment to this letter.

The attachment to the letter of appointment includes information as to hours of work, leave, accommodation and medical benefits. There was no reference to redundancy. For this, it would have been necessary to refer to the PAM which, it was not in dispute, contained additional terms applicable to SSS.

The issue between the parties, so far as SSS employees are concerned, is whether or not Shell can unilaterally vary terms of service, in reliance on the above clause.

It was argued for the plaintiffs that they could not do so, the ground of objection being that such variations could only be made if they could be said to constitute a benefit to the employee, since there would otherwise be no consideration for the variation.

In general, it may be said that, at common law, the Courts, unless there is statutory power to do so, (for example, under the Unfair Contract Terms Act 1977) do not interfere with a contract entered into between two parties of full age and competence. As Lord Diplock observed in *Photo Production Ltd. v. Securicor Transport Ltd.* [1980] AC 827 (HL) at p. 848:

> A basic principle of the common law of contract ... is that the parties are free to determine for themselves what primary obligations they will accept.

If therefore, a contract contains a clause, which is greatly to the advantage of one party, this does not affect its validity in law. In practice, of course, the variation clause in the Shell agreement with SSS had often been invoked, and usually to the benefit of the employees.

The validity of a variation clause, of the kind contained in the SSS employees' letters of engagement, was considered by the Hong Kong Court of Appeal in *Lam Yuk-Ming & Ors. v. Attorney General,* [1980] HKLR 815.

In that case, a number of crown servants were employed by the Hong Kong Government. Each of them (with one exception) was employed under a written contract which contained an express provision that "the Government reserves the right to alter the terms and conditions as may become necessary from time to time".

The Court of Appeal decided that the crown was entitled to rely upon this clause and to alter unilaterally the terms and conditions of employment of its servants, commenting that a provision of this nature was not unusual, since, for example, many leases allow for an increase in rent at the option of the landlord alone.

Where such a variation clause is present in the main contract, as it is in the case of SSS, I see no reason to impose, upon any exercise of the power conferred by the clause, the doctrine of consideration. This has been present in the main contract and it is inappropriate to attempt to impose it again in relation to each exercise of the power.

My attention was drawn to a passage in para. 566 of Vol. 9 of *Halsbury's Laws* where it is said that a unilateral notification by one party, without agreement, of a variation of a contract, cannot be effective, unless the contract provides for such a power to be vested in that party. The passage refers to *page v. Liverpool Friendly Society,* [1927] 43 TLR 712 and *Yeo v. Steward,* [1947] 2 All ER 28.

In Page, the plaintiff was appointed as agent of the defendant, on the basis of the society's rules, which were on the face of them subject go alteration. The society amended the rule dealing with the retirement age of agents to the disadvantage of the plaintiff. It was held that the society was entitled to do so.

In Yeo, the plaintiff entered a contract with a life insurance society which contained a clause under which he bound himself to comply with "all the duties and conditions applicable to agents as stated in the rules of the society". Among these rules was one which provided for the amendment of the rules. An alteration to them was made, in the manner prescribed, and to the detriment of the plaintiff, who argued that the rules could not be so altered. It was held to be a valid amendment to which the plaintiff was subject.

Similarly, I find the variation clause in SSS agreements to be a valid one which entitled Shell to alter unilaterally the terms of employment of SSS, whether these were contained in the attachment to the letter of appointment, or in the PAM or elsewhere.

It follows that the amendment of the terms of services of SSS, so as to remove a right to redundancy payments, was a proper exercise of Shell's power to vary, as contained in the variation clause and that the four SSS employees, plaintiffs 20 to 23, must fail in their claims.

The TAS Employees

It is less simple, in the case of TAS, to determine the terms of their engagement and the extent to which they can be altered.

This difficulty arises because, until 1981, when a form of written contract was introduced for all employees, Shell entered no written agreement with TAS. The 1981 model expressly incorporated in the employee's contract:

(a) any conditions agreed by Shell and the Brunei Oil Workers Union (BOWU), including any amendment thereto;

(b) policies, procedures and benefits set out in the PAM, added that these "may be amended from time to time by the company at is sole discretion".

Had TAS entered such a contract, my finding in relation to SSS would have determined the claim of the first 19 plaintiffs also. In the absence of a written contract, however, I have to decide:

(a) what were the terms under which TAS were serving in 1985;

(b) did they authorize Shell to withdraw the redundancy provision in the manner in which it did.

To answer the first question posed above, it is necessary to consider the nature and effect of the agreement entered between Shell and BOWU, which came into force on 1 October 1981 and lasted throughout the relevant period ("the collective agreement").

Clause 1 of the collective agreement applies to those of the defendant's employees, who held any of the positions listed in the Appendix, which included jobs performed by all the plaintiffs. By clause 2, Shell recognised BOWU as the sole collective negotiating body for salaries, hours of work and the other terms of conditions of employment contained in the collective agreement. There was no mention in the collective agreement of redundancy payments.

There is, however, a reference to other benefits contained in the PAM, in clause 9:

> Existing benefits other than those provided for in this agreement are set out in the Company's Personnel Administration Manual. They company may alter, amend or terminate any of these existing benefits other than those provided for in this agreement, as it considers it necessary

or desirable and will consult the Union prior to final implementation of the alteration, amendment or termination. Similar consultation will take place before the introductions of new non-negotiable benefits.

If, therefore, this clause 9 forms part of the terms part of the terms and conditions of service of TAS, it would enable Shell, provided that it complied with the requirements of clause 9, to vary conditions of service, in the same way as I have found that it can do in relation to SSS.

There is no statute law in Brunei which governs the status and effect of collective agreements. It is, therefore, necessary to refer to the rules of common law which govern the matter.

Status of the Collective Agreement

The forms of contracts of employment vary greatly, from a lengthy written document to a bare oral agreement to employ and to serve.

TAS signed a so called "agreement" which stated merely that "by joining Shell, I will be on probation for three months". At the expiry of that period, they would receive a letter from Shell to the effect that the employee had been confirmed in his job "as a regular employee of the company". He was told that he was eligible to join the Thrift Fund, but there was no other reference to the terms of his engagement.

It is therefore necessary for me to determine what the parties must be taken to have agreed about the many necessary ingredients of a contract of employment which were not expressly mentioned. Often, the sensible answer, in the absence of any stated conditions, is that the parties intended to be bound by the "usual terms".

One of the sources of such "usual terms" is to be found in any collective agreement or award which is applicable to the employee concerned.

It was contended on behalf of the plaintiffs, however, that the terms of the collective agreement between Shell and BOWU was not part of the terms of contract of TAS, the plaintiffs recognising, no doubt, that if it was, clause 9, which provided for variation, might defeat their claims, as, in my judgment, a similar variation clause has defeated the claims of the SSS plaintiffs.

In support of this contention, I was referred to *Ford Motor Co. Ltd. v. AEF* [1969] 2 All ER 482. The plaintiff and defendant had entered collective agreements regulating relations between them. When the plaintiff proposed a variation of the contracts of service of its employees, the defendant took strike action and the plaintiff sought an injunction to restrain such action, relying on the collective agreements.

Geoffrey Lane J held that the collective agreement concerned was not intended to create a legal relationship between the parties to it, so that neither the company nor the union could enforce its contents. The Court was not, however, called upon to express any opinion as to whether or not matters agreed between the parties, in accordance with the collective agreement, had been embodied workers' contracts. It decided only that the collective agreement was not enforceable by either of the parties of it, *inter se*.

In *National Coal Board v. Galley* [1958] 1 All ER 91, the plaintiff claimed damages from the defendant, one of its employees, who had refused to work, in breach of an agreement reached between the plaintiff and Galley's Union. Galley had entered a written service agreement, which contained a clause to the effect that his contract would be subject to agreements reached between the National Coal Board and Galley's Union.

The Court of Appeal held that Galley was liable in damages because his contract was governed by the collective agreement, which Galley had accepted as part of his contract of service.

In *Young v. The Canadian National Rail* [1930] AC, 83, the House of Lords considered the effect of a wage agreement reached between the CNR, the employer, and the American Federation of Labour, representing the railway workers.

The plaintiff, a railway employee, claimed that the wage agreement was part of his contract and that the railway company could only dismiss him in accordance with its terms. The headnote states that the wage agreement did not form part of the plaintiff's contract, although, in many respect, he had been treated as if it was.

Lord Russell, at p. 87 observed that the question to be asked was "whether the appellant had established that the contract of service, which existed between himself and the railway company, included terms, whereby the railway either bound itself to the appellant to observe the provisions of the Wages Agreement or bound itself to the appellant to observe provisions similar to it. If the answer to this questions was yes, the contract would be enforceable as a contract of employment with special terms.

The House of Lords, on the construction of the wording and context of the Wages Agreement with AFL, concluded that it did not establish any contractual liability on the railway to apply the Wages Agreement to its employees.

I take the effect of these cases to be that a collective agreement between an employer and a union, as to the terms to be applied to a member of that union, employed by the employer:

(a) will not be enforceable by employer or union against one another, since such an agreement, unless it provides otherwise, is not intended to create a legal relationship between the parties;

(b) to the extent to which an employee agrees to be governed by the terms of such an agreement, or of any conditions of service agreed, in accordance with its terms, such conditions become part of his terms of service and are enforceable by or against him.

The recent case of *Morley v. Forward Trust Group* [1986] Times 1 July reinforces this view. Although the collective agreement itself contained a clause stating that it was binding in honour only and was not legally enforceable, the Court decided that this did not prevent any of its provisions from achieving legal effect if, on the facts, it was appropriate to incorporate it as a term of an individual contract.

Incorporation of Collective Agreement

In law, therefore, a collective agreement may become incorporated as part of the service contract of an employee. Whether it does or not depends upon the construction of the agreement and an examination of the circumstances of the worker's employment. The following factors persuade me that the collective agreement is embodied in the contract of service of TAS:

(a) So far as both Shell and BOWU are concerned, that was their expressed intention, to which Shell has consistently given effect.

(b) Shell accepted BOWU as the sole negotiating body for "salaries, hours of work and other conditions" for TAS.

(c) The collective agreement dealt with salaries, increments, leave, sick leave, overtime rates, annual bonus and retirement age, among other matters. These are essential parts of any contract of service. For TAS, these terms cannot be derived from any other source, though they may, at a later stage, be incorporated in the PAM.

(d) Both Shell and TAS must have assumed that their relationship was governed by the collective agreement as constituting the "usual terms" on which TAS were engaged.

(e) For years, both Shell and TAS had operated on the basis that wage rates and other benefits were adjusted under the collective agreement.

(f) By reason of the "official bystander test". If, while both parties to the contract were making their bargain, an officious bystander had suggested that the contract should contain a clause to the effect that the terms of the collective agreement should be regarded as part of the worker's contract, would they both have replied, "yes, of course"? I have no doubt that Shell and TAS would both have given that answer, because that is how their relationship has worked for several years.

Variation of the Redundancy Clause

Having found that the collective agreement is part of TAS contracts of service, I have to consider the effect of clause 9 of it, which deals with variation.

The clause states that existing benefits, other than those in the collective agreement, are set out in the PAM and adds that the company may "alter, amend or terminate any of these existing benefits, ... as it considers necessary or desirable and **will consult the Union** prior to final implementation of the alteration, amendment or termination".

It is not in dispute that the provision for redundancy, of which the plaintiffs seek to take advantage, was "one of the existing benefits set out in the PAM".

What I have to decide is whether Shell properly exercised the power to terminate that benefit under clause 9. Since, by the terms of that clause, it was not necessary for Shell to consult BOWU before deciding to abolish such payments but only before implementing that decision, the issue I must decide is whether there was consultation before final implementation.

Consultation

The dictionary meaning (*Oxford Advanced Learners Dictionary of Current English*) of "consult" is "to go to a person for information, advice, opinion etc". And "consult with: is defined as "discuss with".

Bucknell LJ, in *Rollo v. Minister of Town and Country Planning* [1948] 1 All ER 13 commented on a statute which required "consultation" with local authorities as follows:

> Consultation means that on the one side, the Minister must supply sufficient information to the local authority to enable them to tender advice and, on the other hand, a sufficient opportunity must be given to the local authority to tender advice.

In *Re Union of Benefices of Whippingham and East Cowes, St. James* [1954] AC 245, consultation was defined as meaning that a full and sufficient opportunity must be given to members of the council to ask questions and to submit their opinions in any reasonable way.

The defendant does not dispute that consultation was required under clause 9, prior to implementation of the decision, which had been taken on 6 November by Shell, to terminate redundancy payments. It argues that such consultation did take place, on 31 January 1985. The plaintiffs argue that nothing occurred which could properly be so described.

Before deciding on whether there was consultation, I must determine the time at which "final implementation" can be said to have taken place, since consultation could be held at any time before that.

The evidence of Mr. Walkley, for the defendant, was that the decision to terminate was taken by the appropriate Shell managerial group on 6 November 1984. This date is noted as the effective date of the change in the relevant amending pages, which were inserted in the PAM.

These amending pages, which replaced the previous paragraphs about redundancy with provisions about instant dismissal, carry 11 February 1985 as their "date of issue". It was distributed to all holders of copies of the PAM, which included BOWU, under cover of a circular memorandum dated 15 February.

Nothing turns on which of these two dates (11 or 15 February 1985) is taken as the date on which the PAM was effectively altered so as to terminate redundancy payments though I would be inclined to take the earlier one, as being the date on which the amending pages were signed for issue.

It was argued for the plaintiffs that I should select 31 January 1985, as the date of implementation, because that was the date on which the plaintiffs received warning letters, informing them that their services "may be terminated", though it was made clear that that letter was not intended to be more than a warning and to have no immediate effect. The first notices of termination of services were sent out on 28 February.

The defendant suggested that the date of implementation should be taken as 28 February when the notices of termination were issued and were the first effective application of the decision to abolish redundancy payments. But such a later date would only assist Shell, if there were evidence of consultation between Shell and BOWU between 31 January and 28 February. There was none. The next discussion with BOWU, after 31 January, was at a meeting on 8 March, at which Union representatives expressed dissatisfaction at the withdrawal of redundancy payments.

The sequence of events which has to be followed, as I interpret clause 9 of the Collective Agreement, is:

(a) Shell decides to terminate an "existing benefit", which it did on 6 November;

(b) Shell must consult BOWU, before final implementation of its decision;

(c) Shell "finally implements" the termination, as it did on 11 February.

What consultation with BOWU took place before 11 February? According to the evidence, this was limited to the meeting which was held on the morning of 31 January 1985, between Mr. Hamidon, who represented Shell, and representatives of BOWU, who included the Marine Department representative and the general secretary.

Shell had decided, for reasons which seemed sufficient at the time and are understandable, that the union should be informed of the expected redundancies and of the abolition of redundancy payments shortly before similar meetings with the Consultative Committee, which represented SSS, and with the affected employees themselves.

At his meeting with the BOWU representatives, Mr. Hamidon told them of the steps that Shell intended to take to reduce surplus man-power. He explained that the company had terminated redundancy payments and spelt out the revised terms to the Union. He read out top them the letter which was to be given to TAS who would be affected and gave copies to them to read.

a According to him, BOWU did not ask about anything other than whether employees would receive retirement and provident fund benefits on leaving the service.

Unfortunately, no record was made of this meeting and Mr. Hamidon had to rely on his memory. I accept, however, that he did brief BOWU fully on the proposed changes, including abolition of redundancy pay, at that meeting. He had to do the same to the workers affected, later the same morning and he could not possibly have taken the risk, even if he had wanted *b* to do so, of not briefing BOWU fully. In addition, a BOWU representative was invited to attend the two later meetings and did so.

Although BOWU made no comment on the abolition of redundancy benefits on 31 January the plaintiffs and others affected wrote to Shell on 11 February, asking for redundancy payments to be made. No reply having been received from Shell, they wrote to BOWU on *c* 28 February.

No doubt as a result of this letter, BOWU sought a meeting with Shell representatives, which was held on 8 March. Minutes of this meeting are available and show that BOWU complained that the TAS Manual had been altered without prior consultation and that the change had not been communicated to BOWU or the employees.

d I regard this as an exaggeration. There had been a meeting on 31 January between Mr. Hamidon and BOWU. Amendments to the PAM had been circulated to all holders of the manual on 15 February.

I had to consider, in deciding if consultation occurred before 11 February 1985, whether subsequent correspondence throws any doubt on the accuracy of Mr. Hamidon's evidence.

e BOWU, in a letter to Shell dated 1 April asserted that the redundancy proviso was "still valid" because the company had never discussed with the Union the cancellation of the condition.

This is correct, in the context in which that assertion is made; this refers to the company representative, at the meeting with BOWU on 8 March explaining with BOWU on 8 March, explaining that the clause was cancelled in November 1984.

f

It cannot be doubted that, if that was the date by which BOWU should have been consulted, Shell had failed to comply. But, as I have said, the date that matters is not that of the Shell decision to terminate, but the date on which that decision was "implemented".

Shell replied, on 12 April, explaining that, in view of the sensitive nature of the issue of redundancy, little could have been gained from prior consultation and that consultation with *g* the Union prior to the implementation of the new terms would have put Union representatives in a difficult position.

However, the letter continues by saying that a comprehensive briefing was given to the Union, on 31 January, after careful thought as to the announcement of changes to the redundancy terms.

h I regard this letter, in reply to the BOWU complaint of 1 April, as making the mistake of assuming that BOWU was correct in asserting that consultation should have taken place before November 1984.The writer had erroneously assumed that the date of implementation was 6 November, so that his concession the obligation to consult before that date was fulfilled is of no value.

i In his evidence, Mr. Walkley, who signed the letter of 12 April, insisted that he knew there was an obligation to consult BOWU and that that was the purpose of the meeting arranged with them on 31 January.

Apply the tests suggested in Rollo, it follows, from my acceptance of Mr. Hamidon's testimony that BOWU was fully briefed about the abolition of redundancy payments, that sufficient confirmation was supplied to BOWU to enable them to tender advice.

They were given an opportunity to comment on this, as well as on other aspects of the proposed run down of staff. They did offer comments on other aspects of the proposals, though not on redundancy payments.

They asked, at the end of the meeting, for a further meeting on other aspects of the proposals, but not about redundancy payments.

It might, perhaps, he suggested that BOWU did not have sufficient time to appreciate fully what was said to them at the first meeting on 31 January. If this were so, which I do not accept, the attendance of their representatives at the next two meetings that morning, at which the ending of redundancy benefits was again explained, would surely have made the proposal clear. It was certainly understood by TAS, who wrote to Shell to complain about it on 11 February.

While Shell's manner of meeting its obligation to conduct may have been perfunctory and tactless, can it be said to have been insufficient to amount to consultation? For the reasons I have given, I think not.

I find that Shell did supply sufficient information to BOWU to enable them to tender advice and an adequate opportunity, to express an opinion, before the date of implementation, which I find to have been 11 February, when the PAM was altered to give effect to the earlier decision.

I therefore decide that:

(a) the collective agreement formed part of the contract of service of TAS;

(b) the PAM also formed part of such contract, by virtue of clause 9 of the collective agreement;

(c) that benefits in the PAM could be terminated under clause 9, if there was prior consultation with the Union before implementation;

(d) that such consultation was carried out on 31 January 1985;

(e) that it preceded implementation on 11 February 1986;

(f) that redundancy payments were thus terminated in accordance with the contracts of service of the plaintiffs;

(g) that consequently the 19 TAS plaintiffs' claims must also fail;

The claims of all plaintiffs are dismissed.

Also found at [1988] 2 CLJ 571